

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID B. DURAN,

Plaintiff,

v.

MANDUJANO, et al.,

Defendants.

Case No.: 15-CV-2745-DMS (WVG)

**ORDER DENYING PLAINTIFF'S
MOTION TO APPOINT COUNSEL**

[DOC. NO. 30]

I. INTRODUCTION

This is a civil rights case under 42 U.S.C. § 1983 in which Plaintiff David B. Duran, an inmate currently housed at the California Rehabilitation Facility, is proceeding *pro se* and *in forma pauperis*. On December 7, 2015, Plaintiff filed the instant Complaint, alleging that, while he was an inmate at the Regional Adult Detention Facility in Imperial County, California, the Defendant police officers served him with a search warrant to retrieve his DNA against his will. (Doc. No. 1 at 4.) Plaintiff claims that he was transported by Defendants to Brawley Memorial Hospital, where he was forcefully restrained despite his protests, and his blood was extracted against his will. *Id.* at 4-8.

On July 25, 2016, Plaintiff filed a Motion for Appointment of Counsel. (Doc. No. 30.) That Motion is currently before the Court.

1 **II. APPLICABLE LAW**

2 “There is no constitutional right to appointed counsel in a § 1983 action.” Rand v.
 3 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (partially overruled *en banc* on other
 4 grounds). Thus, federal courts do not have the authority “to make coercive appointments
 5 of counsel.” Mallard v. United States District Court, 490 U.S. 296, 310 (1989); see also
 6 United States v. \$292,888.04 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995).

7 Districts courts do have discretion, however, pursuant to 28 U.S.C. Section
 8 1915(e)(1), to request that an attorney represent indigent civil litigants upon a showing of
 9 exceptional circumstances. See Agyeman v. Corrections Corp. of America, 390 F.3d 1101,
 10 1103 (9th Cir. 2004). “A finding of the exceptional circumstances of the plaintiff seeking
 11 assistance requires at least an evaluation of the likelihood of the plaintiff’s success on the
 12 merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the
 13 complexity of the legal issues involved.’” Agyeman, 390 F.3d at 1103 (quoting Wilborn
 14 v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)); see also Terrell v. Brewer, 935 F.2d
 15 1015, 1017 (9th Cir. 1991).

16 The Court agrees that any *pro se* litigant “would be better served with the assistance
 17 of counsel.” Rand, 113 F.3d at 1525; citing Wilborn, 789 F.2d at 1331. However, so long
 18 as a *pro se* litigant, like Plaintiff in this case, is able to “articulate his claims against the
 19 relative complexity of the matter,” the exceptional circumstances which might require the
 20 appointment of counsel do not exist. Rand, 113 F.3d at 1525 (finding no abuse of discretion
 21 under 28 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact
 22 that *pro se* prisoner “may well have fared better-particularly in the realms of discovery and
 23 the securing of expert testimony”).

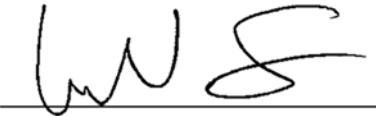
24 **III. DISCUSSION**

25 To date, Plaintiff has filed his Complaint, and the Defendants have filed Answers.
 26 On June 28, 2016, the Court issued a Scheduling Order which initiated the discovery
 27 process. (Doc. No. 17.) At this stage of the litigation, the Court is unable to determine
 28 whether Plaintiff will succeed on the merits. The Court has read the Complaint, and finds

1 that Plaintiff is able to articulate his claims *pro se*, and that the issues presented are not
2 particularly complex. Thus, the exceptional circumstances which might require the
3 appointment of counsel do not exist. Accordingly, the Court hereby **DENIES** Plaintiff's
4 motion for appointment of counsel **WITHOUT PREJUDICE**.

5 **IT IS SO ORDERED.**

6 Dated: July 27, 2016



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8 Hon. William V. Gallo
9 United States Magistrate Judge
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